

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

CAMI JO TICE-HAROUFF,

Plaintiff

v.

Case No. 6:22-cv-00201-JDK

CAROLE JOHNSON, *et al.*,

Defendants.

**STIPULATION AND FINAL ORDER
AND SETTLEMENT OF CLAIMS**

Plaintiff, Cami Jo Tice-Harouff, commenced this action on May 25, 2022, by filing her Verified Complaint alleging that Defendants violated the Administrative Procedure Act, 5 U.S.C. § 706, regarding the removal of language requiring coverage of fertility awareness-based methods of family planning (“FABM”) in the 2021 updates to the Women’s Preventive Services Guidelines (“2021 Guidelines”).¹ In her Verified Complaint, Plaintiff seeks, *inter alia*, a temporary restraining order, preliminary injunction, and permanent injunction against Defendants to enjoin the effectiveness of the removal of the FABM coverage language. On May 27, 2022, Plaintiff filed her Motion for Temporary Restraining Order and Preliminary Injunction, and Brief in Support (“Plaintiff’s Motion”). ECF No. 4. On August 12, 2022, the Court entered its Memorandum Opinion and Order granting Plaintiff’s Motion and entering a preliminary injunction. ECF No. 29.

¹ The 2021 Guidelines to which this Final Order applies can be found at: <https://www.hrsa.gov/womens-guidelines> (last viewed October 13, 2022) (see also Exh. A to the Verified Complaint, ECF No. 1-1); “Update to the Women’s Preventive Services Guidelines,” 87 Fed. Reg. 1,763 (Jan. 12, 2022); and “January 21, 2022 Ratification of Preventive Services Guidelines and Recommendations by Secretary of Health and Human Services Xavier Becerra” (Jan. 21, 2022), available at ECF No. 65, pages App002 & App026-035 in *Kelley v. Becerra*, Case No. 4:20-cv-00283-O (N.D. Tex. Jan. 28, 2022).

Now, Plaintiff and Defendants hereby stipulate to and request the entry of a Final Order and Settlement of Claims (“Order”) to resolve all matters in dispute in this action except Plaintiffs’ request for attorneys’ fees and costs.

FINDINGS OF FACT

Based on all of the parties’ submissions in this case, the court’s preliminary injunction decision, and the stipulation of the parties, the Court finds as follows:

1. This action is brought by Plaintiff Cami Jo Tice-Harouff pursuant to the Administrative Procedure Act (APA), 5 U.S.C. § 551 *et seq.*, and 5 U.S.C. § 705 & 706. The Verified Complaint, including both of Plaintiff’s claims, seeks injunctive relief and an order holding unlawful and setting aside the action of removing the FABM coverage language, consistent with the relief provided below.
2. This Court has jurisdiction over the subject matter of this action and has jurisdiction over Defendants. Venue in the Eastern District of Texas is proper.
3. Defendants neither admit nor deny any of the allegations in the Verified Complaint, except as specifically stated in this Order. Only for purposes of this action, Defendants admit the facts necessary to establish jurisdiction. Defendants’ position is that the deletion of the sentence discussing FABM in the 2021 Guidelines did not and does not remove coverage for FABM.
4. Plaintiff contends that the deletion of the sentence and the process surrounding that action violated the APA for the reasons discussed in her Verified Complaint and in the Court’s preliminary injunction decision.
5. Plaintiff does not waive any claim that she may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, or any other law providing for costs and expenses, including attorneys’ fees, concerning the prosecution of this action to the date of this Order or as needed to seek a costs and

fees award. Defendants do not waive their right to oppose such claims. The parties agree to an extension of time by which if Plaintiff wishes to file a petition under the EAJA, her deadline to do so is January 20, 2023.

ORDER

I. IT IS ORDERED that the Defendants' December 2021 deletion of the following sentence from the 2021 Guidelines is vacated, and as a consequence this sentence remains at the conclusion of the "Contraception" section of those guidelines:

Additionally, instruction in fertility awareness-based methods, including the lactation amenorrhea method, although less effective, should be provided for women desiring an alternative method.

II. IT IS FURTHER ORDERED that Plaintiff's deadline for filing a motion for costs and expenses, including attorneys' fees, under the Equal Access to Justice Act, is January 20, 2023.

So **ORDERED** and **SIGNED** this _____ day of _____, 2022.

JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE

IT IS SO STIPULATED BY THE PARTIES:

/s/ Matthew S. Bowman
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